

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

STATE OF TENNESSEE v. ROBERT M. LINDER

Appeal from the Circuit Court for Blount County
No. C-14001 David Reed Dugan, Judge

No. E2009-01927-CCA-R3-CD - Filed September 29, 2010

The Appellant, Robert M. Linder, filed a motion in the Blount County Circuit Court seeking a reduction in his sentence. The trial court denied the motion. The Appellant filed an appeal contesting the trial court's ruling. In response, the State filed a motion requesting that this court affirm the trial court's ruling pursuant to Rule 20, Rules of the Court of Criminal Appeals. Upon review of the record and the parties' briefs, we conclude that the motion was properly dismissed. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Robert M. Linder, Wartburg, Tennessee, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; Renee W. Turner, Senior Counsel, Michael L. Flynn, District Attorney General; and Robert L. Headrick, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The appellant was convicted of especially aggravated sexual exploitation of a minor following a bench trial before the Blount County Circuit Court. The trial court imposed a twelve-year sentence, which this court modified to eleven years. State v. Robert Linder, No. E2004-02848-CCA-R3-CD, 2006 WL 2714266, at *1 (Tenn. Crim. App. at Knoxville, Sept. 22, 2006). On August 20, 2009, the appellant filed in the Blount County Circuit Court a "MOTION FOR SENTENCE RELIEF PURSUANT TO RULING IN STATE OF

TENNESSEE VS. REEP, E2007-00619-CCA-R3-CD AND USCA SIXTH AMENDMENT RIGHT TO A JURY TRIAL,” arguing that Blakely v. Washington, 542 U.S. 296 (2004), entitled him to have his sentence reduced. The trial court found that Appellant had filed an “informal pro se motion for reduction or modification of sentence . . . pursuant to Rule 35(b) of the Tennessee Rules of Criminal Procedure.” Finding no merit to the appellant’s claims, the trial court denied the petition without an evidentiary hearing. The trial court noted that Appellant had filed numerous pleadings seeking a modification of his sentence.

On appeal, the appellant argues that his motion “was not filed pursuant to Rule 35(b)” and that the trial court therefore erred in denying his motion. Our review of the record leads us to conclude that the Appellant is once more attempting to convince this court that Blakely dictates a reduction in his sentence.

Moreover, we note that this court has issued two opinions addressing the appellant’s complaints that his sentence violated Blakely. See Robert M. Linder v. State, No. E2008-00693-CCA-R3-PC, 2010 WL 3210399 (Tenn. Crim. App. at Knoxville, Aug. 13, 2010); Robert M. Linder v. David Mills, Warden, No. E2010-00462-CCA-R3-HC, 2010 WL 2852645 (Tenn. Crim. App. at Knoxville, July 21, 2010). The Appellant’s motion is simply another attempt to argue the same complaints.

The State’s motion is granted. The judgment of the trial court is affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

NORMA McGEE OGLE, JUDGE